

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

ROBERT WAGNER,

No. 6:15-cv-01612-YY

Petitioner,

v.

JEFF PREMO,

ORDER

Respondent.

HERNANDEZ, District Judge:

Magistrate Judge You issued a Findings & Recommendation (#63) on October 3, 2018, in which she recommends the Court deny Petitioner's petition for writ of habeas corpus and deny a certificate of appealability. Petitioner has timely filed objections to the Findings & Recommendation. The matter is now before me pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b).

When any party objects to any portion of the Magistrate Judge's Findings & Recommendation, the district court must make a *de novo* determination of that portion of the

Magistrate Judge's report. 28 U.S.C. § 636(b)(1); *Dawson v. Marshall*, 561 F.3d 930, 932 (9th Cir. 2009); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc).

I have carefully considered Petitioner's objections and conclude there is no basis to modify the Findings & Recommendation. I have also reviewed the pertinent portions of the record *de novo* and find no other errors in the Magistrate Judge's Findings & Recommendation except for one mistaken reference to Matthews instead of Robinson at page 4, in the second sentence of the second full paragraph. There, Judge You stated that "Matthews heard the man say, 'What's up cuz?'" and recognized the voice as Petitioner's." F&R at 4. The record, however, makes clear that it was Robinson who heard the statement, not Matthews. ECF 20-1 at 210-11.

CONCLUSION

The Court ADOPTS Magistrate Judge You's Findings & Recommendation [63], and therefore, Petitioner's petition for writ of habeas corpus [1] is denied. Because Petitioner fails to make a substantial showing of the denial of a constitutional right, I deny a certificate of appealability.

IT IS SO ORDERED.

DATED this 24 day of Oct, 2018.


MARCO A. HERNANDEZ
United States District Judge